

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

The Ohio Casualty Insurance
Company,

Plaintiff,

v.

Kenneth A. Beall and Deborah H.
Beall,

Defendants.

Case Number: 3:23-cv-00060

COMPLAINT FOR INDEMNITY

The Ohio Casualty Insurance Company (“Ohio Casualty”) files this Complaint against Kenneth A. Beall and Deborah H. Beall (collectively “Indemnitors”) and shows the Court the following:

PARTIES

1. Defendant Kenneth A Beall is a citizen of the State of Georgia with his domicile located at 1041 Lake Welbrook Drive, Athens, Georgia 30606-6291, which is located in Oconee County.

2. Defendant Deborah H. Beall is a citizen of the State of Georgia with her domicile located at 1041 Lake Welbrook Drive, Athens, Georgia 30606-6291, which is located in Oconee County.

3. Ohio Casualty is a corporation formed under the laws of the State of New Hampshire with its principal place of business in Massachusetts.

JURISDICTION AND VENUE

4. This matter concerns an amount in controversy greater than \$75,000.00, exclusive of interest and costs.

5. There is complete diversity of citizenship between the Plaintiff and each of the Defendants.

6. This Court has jurisdiction of this matter under 28 U.S.C. § 1332(a), and venue is proper in this District and Division pursuant to 28 U.S.C. § 1391(a) and Local Rule 3.4, as all Indemnitors reside in the Middle District of Georgia, Athens Division.

FACTS

7. Oconee Parkside Development Partners, LLC (“Principal”) was a developer that in and around 2005-2006 was involved in the development known as Westland Subdivision, Phase One in Oconee County, Georgia (the “Westland Subdivision”).

8. In connection with the Westland Subdivision, Principal and Developers Surety and Indemnity Company (“Developers Surety”) executed the following four bonds which were delivered to Oconee County (collectively referred to herein as the “Bonds”):

Bond #	Description	Penal Sum
592665S / 37K002482	Street(s) Construction and Paving Performance Bond	\$91,429.00
592666S / 011237139	20% Paved Street(s) Maintenance Performance Bond	\$195,278.80
592667S / 37K002483	Bond for Sanitary Sewer System Installation	\$400,000.00
592668S / 011237140	10% of Installed Waterline and Sanitary Sewerline Performance Maintenance Bond	\$83,964.30

9. In consideration of the Developers Surety's execution of the Bonds on behalf of Principal, two indemnity agreements were executed by Indemnitors and provided to Developers Surety.

10. A true and accurate copy of the Indemnity Agreement dated April 25, 2005, which was executed by Indemnitors, is attached hereto as Exhibit A.

11. A true and accurate copy of the Indemnity Agreement dated October 12, 2006, which was executed by Indemnitors, is attached hereto as Exhibit B.

12. Both of the Indemnity Agreements provide, in part, as follows:

Surety: Developers Surety and Indemnity Company and/or Indemnity Company of California , as evidenced by one or more duly executed Bonds, or their assigns, or any other persons or entities which any of them may procure to act as surety or as co-surety on any Bond, or any other person or entity who executes a Bond at the request of any of them.

1. INDEMNIFICATION. In consideration of the execution and delivery by Surety of a Bond or any Bonds on behalf of Principal, Principal and Indemnitor shall pay all premiums charged by Surety in connection with any Bond (including extensions, renewals or modifications) issued by Surety on behalf of Principal and shall indemnify and hold harmless Surety from and against any and all liability, loss, claims,

demands, costs, damages, attorneys' fees and expenses of whatever kind or nature, together with interest thereon at the maximum rate allowed by law, which Surety may sustain or incur by reason of or in consequence of the execution and delivery by Surety of any Bond on behalf of Principal, whether or not Surety shall have paid any amount on account thereof...

13. On or about October 4, 2007, Oconee County, as obligee on the Bonds, sent a demand letter to Developers Surety, declaring Principal in default and demanding that Developers Surety perform under the Bonds based on the County's allegations that Principal had abandoned the Project after failing to meet its obligations to complete the work.

14. On or about May 16, 2008, Principal was administratively dissolved with the Georgia Secretary of State.

15. At the request of Oconee County, on or about October 11, 2007, Developers Surety issued Continuation Certificates for each of the Bonds, and did so each year up and through 2019, the last year Continuation Certificates were issued.

16. On March 1, 2017, the current owners of the Westland Subdivision and/or their predecessors filed lawsuits against Oconee County alleging, among other things, entitlement to the wastewater treatment capacity previously committed to the subdivision.

17. On or about October 8, 2018, the County and the subsequent owners of the Westland Subdivision entered into a Settlement Agreement which

authorized the new owners to pursue the bond claims on behalf of Oconee County to recover the penal amounts of the Bonds.

18. Effective May 31, 2019, Ohio Casualty, a member of Liberty Mutual Insurance Company (“Liberty Mutual”), assumed responsibility for the Bonds and Continuation Certificates.

19. On May 31, 2019, Developers Surety assigned, transferred and conveyed to Ohio Casualty all of its post, present and future rights, privileges, benefits and other interests arising under or relating to the Indemnity Agreement.

20. Oconee County subsequently pursued its claims against the Bonds.

21. On or about April 6, 2021, Ohio Casualty entered into a Settlement Agreement with Oconee County wherein Ohio Casualty agreed to reimburse the County up to certain amounts on each of the Bonds for the performance of work on the Westland Subdivision.

22. On December 20, 2022, pursuant to the obligations contained in the Settlement Agreement Ohio Casualty paid the total sum of \$400,000.00 to resolve Oconee County’s claims on Bond for Sanitary Sewer System Installation (Bond # 592667S /37K002483).

23. Ohio Casualty has incurred substantial costs, counsel fees and expenses investigating claims made concerning the Bonds, in collecting on losses sustained on the Bonds, and in prosecuting this action.

COUNT I - BREACH OF INDEMNITY AGREEMENTS

24. Ohio Casualty restates and realleges each and every allegation set forth above in paragraphs 7 through 23 as if set forth verbatim herein.

25. Indemnitors are liable to Ohio Casualty for all liability, loss, claims, demands, costs, damages, attorneys' fees and expenses of whatever kind or nature, that Ohio Casualty has incurred and continues to incur as a result of the Bonds.

COUNT II - ATTORNEY'S FEES AND EXPENSES

26. Ohio Casualty restates and realleges each and every allegation set forth above in paragraphs 7 through 23 as if set forth verbatim herein.

27. Indemnitors are liable to Ohio Casualty for all attorney's fees, costs, and expenses paid or incurred in investigating claims on the Bonds, collecting on losses sustained on the Bonds and initiating and prosecuting this present action.

WHEREFORE, Ohio Casualty prays for a judgment in its favor and against the Indemnitors, jointly and severally, as follows:

- (a) In an amount to as shown by the evidence for the losses, costs and expenses that Ohio Casualty has sustained and continues to sustain as a result of the execution of the Bonds on behalf of Principal, which amount will be shown more fully at trial; and
- (b) In an amount as shown by the evidence for the attorney's fees that the Ohio Casualty has incurred and continues to incur as a result of

investigating claims on the Bonds, collecting on losses sustained on the Bonds and initiating and prosecuting this present action, which amount will be shown more fully at trial; and

(c) For all other relief that this Court deems just and appropriate.

Respectfully submitted, this 7th day of June, 2023.

/s/ David A. Harris
DAVID A. HARRIS
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